United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 17,470

424

DENNIS HOPKINS,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM J. GARBER
412 5th Street, N. W.
Washington 1, D. C.

J. NORMAN STONE
1010 Vermont Avenue, N. W.
Washington 5, D. C.

Attorneys for Appellant.

STATEMENT OF QUESTIONS PRESENTED

I.

Whether the Lower Court erred in denying appellant's motion to withdraw his Plea of Guilty and for Mental Examination, summarily, and without affording the appellant a formal hearing on the issues and matters raised by said motion.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,470

DENNIS HOPKINS,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under Section 1291 of Title 28 of the United States Code, and Rule 37 of the Federal Rules of Criminal Procedure.

STATEMENT OF THE CASE

On May 14, 1962 an information was filed in the Court below in which the appellant was charged with two (2) counts of violating the Federal Narcotics Laws, which offenses were alleged to occur on March 30, 1962 (J.A. 1).

Following the appointment of Counsel the appellant entered a plea of not guilty in the Court below on May 18, 1962, the appointed Attorney being present at that time (J.A. 2).

Appellant filed a pro se motion to suppress evidence and subsequently the appointed Counsel withdrew and new Counsel appeared in the case, filing a motion for the disclosure of the name of the material witness. The Court below denied without prejudice these motions by order of June 25, 1962 (J.A. 6).

On the date of June 25, 1962, the appellant withdrew his plea of Not Guilty and entered a plea of guilty to Count One (1) of the indictment (J.A. 5). The Court after inquiry accepted the plea and referred the matter to the Probation Office of the Court (J.A. 5).

On August 3, 1962 the appellant appeared in Court for sentencing and received a sentence of from three (3) to ten (10) years (J.A. 6).

On September 5, 1962, the appellant through new Counsel filed a motion to set aside the plea of guilty and for a Mental Examination (J.A. 7). The motion was supported by the affidavit of one Ethel Hopkins and recited that she had good and sufficient reason to believe that appellant was of unsound mind and mentally ill. The Affidavit further recited that the appellant would look at things very hard as if he had never seen them before staring straight at them for some time. He would start a conversation and stop in the middle and if someone asked him what he was talking about he would be unable to explain. The affiant further recited that appellant drew a gun on her and when she told him about it he said he did not do it and started to cry. He would ask for something and when it was given to him he would state that he did not ask for it. He talked to himself

continuously and would go into the bathroom, lock the door and stay for hours at a time. That was the extent of the Affidavit (J.A. 8).

The Government filed a written Opposition to the motion and on October 26, 1962 the Court by written order denied the motion reciting that it was of the opinion and hereby certified that the motion and files and record in the case conclusively showed that the Appellant was entitled to no relief (J.A. 9). The record also reflects that no hearing was held on the motion.

Hence, this Appeal.

THE STATUTES AND RULES INVOLVED

Rule Thirty-Two (32), Section D of the Federal Rules of Criminal Procedure reads as follows:

> "(d) Withdrawal of Plea of Guilty. A motion to withdraw a plea of guilty or of nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the Court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea. "

STATEMENT OF POINTS

The Lower Court erred in denying appellant's motion to withdraw his plea of Guilty and for Mental Examination.

SUMMARY OF ARGUMENT

When appellant filed his motion to withdraw his Plea of Guilty and for a Mental Examination supported by the Affidavit of his wife he raised an issue which should have been resolved at a hearing and should not have been acted upon by the Court below in a summary manner. The Court below should have afforded the appellant a formal hearing on the matters raised by the motion, including the taking of testimony and the consideration

of any other evidence to determine whether or not manifest injustice needed to be corrected as set forth in Rule 32(d) of the Federal Rules of Criminal Procedure. This is the issue and the marrow of appellant's appeal.

ARGUMENT

The Lower Court Erred in Denying Appellant's Motion to Withdraw His Plea of Guilty and for Mental Examination

The sole and single issue in this appeal is whether or not in view of the record in the Court below, appellant's motion to withdraw his Plea of Guilty and for Mental Examination should have been summarily denied.

Regarding the appropriateness of conducting a hearing on motions to withdraw pleas of guilty, we find in Barron & Holtzoff, Federal Practice and Procedure, Vol. 4, Sec. 2264, page 231, 1962 Pocket Part, the recognition that there are some situations of a tangential nature, which can be resolved apart from the merits of the case, that a Court may hold a hearing to determine whether just and fair reasons exist to withdraw a plea of guilty.

In Dandridge v. United States, 78 S.Ct. 714, 356 U.S. 259, 2 L.Ed. 757, the Supreme Court of the United States reversed with directions to permit the defendant to change his plea upon the concession of the Solicitor General that a hearing would be appropriate in a situation where an accused seeks to withdraw a plea of guilty on the ground that he was mentally incompetent at the time the plea was entered.

Appellant recognizes that on a motion to withdraw a plea of guilty after the imposition of sentence, the burden of proving "manifest injustice" under Rule 32(d) of the Federal Rules of Criminal Procedure devolves upon him. Watts v. United States, 107 U.S. App. D.C. 367, 278 F.2d 247. Further, that the burden is a heavy one in such a case. Briscoe v. United States, 101 U.S. App. D.C. 318, 248 F.2d 640 (Opinion of Judge Bazelon).

Bearing in mind that a Court may set aside a judgment of conviction and permit a withdrawal of a guilty plea when necessary to correct manifest injustice, Gearhart v. United States, 106 U.S. App. D.C. 270, 272 F.2d 499, the immediate question in this case, is whether a hearing should have been required by the Court below on the matters raised by the motion and the accompanying affidavit. Though concededly the affidavit may be characterized as being inartfull in the manner in which the pertinent matters are set forth, appellant contends that a question of mental competency and perhaps indications of insanity arises.

As well as an issue of mental competency at the time of the entry of a plea of guilty, the issue of insanity at the time of the offense "is germane to the withdrawal of a plea of guilty." Gearhart v. United States, supra; Poole v. United States, 102 U.S. App. D.C. 71, 250 F.2d 396; Briscoe v. United States, 102 U.S. App. D.C. 145, 251 F.2d 386.

Appellant contends that in view of the authorities cited herein and the matters raised by the motion and affidavit, there is not a conclusive showing that appellant is entitled to no relief and that a hearing by the Court below on appellant's motion to set aside the plea of guilty should have been held.

CONCLUSION

In view of the premises herein considered, appellant contends that the order of the Court below be reversed with direction to conduct a hearing on appellant's motion to set aside the plea of guilty and for mental examination.

Respectfully submitted,

WILLIAM J. GARBER

412 Fifth Street, Northwest
Washington 1, D. C.

J. NORMAN STONE

1010 Vermont Avenue, N. W.
Washington 5, D. C.

Attorneys for Appellant

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JOINT APPENDIX

[Filed May 14, 1962]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on May 1, 1962

THE UNITED STATES OF AMERICA)	Criminal No. 417-62
)	
v.)	Grand Jury No. 437-62.
)	
DENNIS HOPKINS)	Violation: 26 U. S. C. 4704(a) 21 U.S.C. 174
	(Possession and facilitation of concealment and sale of narcotics)

The Grand Jury charges:

On or about March 30, 1962, within the District of Columbia, Dennis Hopkins purchased, sold, dispensed and distributed, not in the original stamped package and not from the original stamped package, a narcotic drug, that is, fifty-one capsules containing a mixture totaling about 1,490 milligrams of heroin hydrochloride, quinine hydrochloride and mannitol and twenty-seven capsules containing a mixture totaling about 200 milligrams of heroin hydrochloride, quinine hydrochloride and mannitol.

SECOND COUNT:

On or about March 30, 1962, within the District of Columbia, Dennis Hopkins facilitated the concealment and sale of a narcotic drug, that is, fifty-one capsules containing a mixture totaling about 1,490 milligrams of heroin hydrochloride, quinine hydrochloride and mannitol and twenty-seven capsules containing a mixture totaling about 200 milligrams of heroin hydrochloride, quinine hydrochloride and mannitol, after said heroin hydrochloride had been imported, with the knowledge of Dennis Hopkins, into the United States contrary to law. This is the

same heroin hydrochloride which is mentioned in the first count of this indictment.

A TRUE BILL:

/s/ Benjamin Blaine
Foreman.

/s/ David C. Acheson
Attorney of the United States in
and for the District of Columbia

[Filed May 18, 1962]

PLEA OF DEFENDANT

On this 18th day of May, 1962, the defendant Dennis Hopkins, appearing in proper person and by his attorney Louis Maniatis, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

The defendant is remanded to the District Jail.

By direction of

MATTHEW F. MC GUIRE
Presiding Judge
Criminal Court # Assignment

* * *

* * *

[Filed July 18, 1962]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS
(CHANGE OF PLEA)

1

Washington, D. C.

Monday, June 25, 1962.

The defendant herein appeared before HONORABLE JOSEPH C. McGARRAGHY, United States District Court Judge, at 2:50 p.m., to change his plea.

APPEARANCES

CECIL R. HEFLIN, Esq.,
Assistant U. S. Attorney,
for the Government.

H. KENNETH SCHROEDER, Esq.,
for the defendant.

2 PROCEEDINGS

MR. SCHROEDER: At this time, Your Honor, the defendant wishes to enter a plea to count one of the indictment.

THE COURT: What is it he wants to do?

MR. SCHROEDER: He wishes to enter a plea of guilty to count one of the indictment, namely, the charge of possession of narcotics without Federal tax stamps, knowing that he has a right to go to trial and be tried by a jury and that in entering such plea he waives his right.

THE COURT: Is this acceptable to the Government?

MR. HEFLIN: That is acceptable to the Government. We will dispose of the second count at the time of the sentence.

THE COURT: Your name is Dennis Hopkins?

THE DEFENDANT: Yes, sir.

THE COURT: If you don't understand me, please tell me so. I am going to ask you a couple of questions, and I want to make sure you understand me.

You are nemed as a defendant in an indictment which has two counts. One deals with the possession of narcotics which I will read you in just a moment, the sale from other than the original stamped package and not from the original stamped package, and the second count deals with another

3 violation of the narcotic laws. Your counsel said that you want to plead guilty to the first count of the indictment, that is, the one dealing with the stamped package. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You understand that we are ready to go to trial in this case right now, we can bring the jury in and go forward with the trial, and that if I take your plea to this first count you will be waiving your right to a trial by jury? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Have you discussed this matter fully with your counsel?

THE DEFENDANT: Yes, sir, I have.

THE COURT: And have any promises of any kind been made to you to cause you to enter a plea to the first count of the indictment?

THE DEFENDANT: No, they haven't, Your Honor.

THE COURT: Are you aware of the consequences and possible sentence that can be imposed on the first count of the indictment? You know what the sentence can be?

THE DEFENDANT: No, I don't.

4 THE COURT: Have you told him what the sentence can be?

THE DEFENDANT: I know what the first count of the indictment sentence can be, yes, sir.

THE COURT: You know what it can be?

THE DEFENDANT: Yes, sir.

THE COURT: No promises have been made to you as to what it will be?

THE DEFENDANT: No, sir.

THE COURT: Neither the United States Attorney nor your counsel have given you any promises or tried to compel you to enter this plea; you are doing it voluntarily, in other words, is that right?

THE DEFENDANT: Yes, I am.

THE COURT: Now, the first count of the indictment to which you are entering a plea reads: "On or about March 30, 1962, within the District of Columbia, Dennis Hopkins purchased, sold, dispensed, and distributed, not in the original stamped package and not from the original stamped package, a narcotic drug, that is, fifty-one capsules containing a mixture totaling 1490 milligrams of heroin hydrochloride, quinine hydrochloride, and mannitol; and 27 capsules containing a mixture totaling about 200 milligrams of heroin hydrochloride, quinine hydrochloride, and mannitol."

5 Did you on that occasion possess these fifty-one capsules and twenty-seven capsules, respectively.

THE DEFENDANT: Yes, I did.

THE COURT: And did they come from other than the original stamped package? Was there a stamped package that they came from?

THE DEFENDANT: No, there wasn't.

THE COURT: There was not. And you want to enter a plea of guilty to this first count because you are guilty and for no other reason?

THE DEFENDANT: Yes, I do.

THE COURT: Very well. Take his plea.

THE DEPUTY CLERK: Dennis Hopkins, in Criminal Case No. 417-62, in which you are charged with violation of the Federal Narcotics Laws, do you wish to withdraw your plea of not guilty heretofore entered and enter a plea of guilty to count one?

THE DEFENDANT: I do.

THE DEPUTY CLERK: Plea of guilty to count one.

THE COURT: Very well. Is he in custody now?

MR. SCHROEDER: Yes, Your Honor.

THE COURT: The defendant will be remanded and the case referred to the probation officer for a presentence report.

6 (Thereupon, the hearing on the change of plea was concluded.)

* * * * *

[Filed June 25, 1962]

Clerk's Entry Showing Change of Plea

On this 25th day of June, 1962, came the attorney of the United States; the defendant, Dennis Hopkins, in proper person and by his attorney, H. Kenneth Schroeder, Jr., whereupon the motions of the defendant for disclosure of the name of a material witness and (pro se) to suppress evidence; coming on to be heard, after a hearing by the Court, are each denied; and thereupon the defendant withdraws his plea of not guilty heretofore entered and enters a plea of guilty to Count One of the Indictment.

The case is referred to the Probation Officer of the Court and the defendant is remanded to the District of Columbia Jail.

By direction of

JOSEPH C. McGARRAGHY
Presiding Judge
Criminal Court # 1

* * *

* * *

[Filed June 25, 1962]

Clerk's Entry Showing Denial of Motion to Suppress

On this 25th day of June, 1962, came the attorney of the United States, the defendant by his counsel H. Kenneth Schroeder, Esquire; whereupon, the motion of the defendant to suppress evidence, and the motion of the defendant to name a material witness, each coming on to be heard, after argument by counsel are each and severally denied, without prejudice.

By direction of

Matthew F. McGuire
Presiding Judge
Criminal Court # Assign.

* * *

* * *

[Filed August 3, 1962]

JUDGMENT AND COMMITMENT

On this 3rd day of August, A. D., 1962 came the attorney for the government and the defendant appeared in person and by counsel, H. Kenneth Schroeder, Esquire;

IT IS ADJUDGED that the defendant has been convicted upon his plea of Guilty of the offense of violating Title 26 of the United States Code,

Section 4704(a) (Purchasing, selling, dispensing and distributing a narcotic drug, not in and from the original stamped package) as charged in Count One, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of From Three (3) Years to Ten (10) Years.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Edward A. Tamm
United States District Judge.

The Court recommends commitment to: an institution in which the defendant will receive treatment for narcotics addiction.

[Filed Sept. 25, 1962]

MOTION TO SET ASIDE PLEA OF GUILTY AND FOR MENTAL EXAMINATION

Comes now the defendant, Dennis Hopkins, by and through his counsel of record, J. Norman Stone, and moves the Court to set aside the plea of guilty of June 25, 1962, and to order the defendant committed to St. Elizabeths Hospital or other mental hospital designated by the Court for such reasonable period as the Court may determine for examination and observation by the psychiatric staff of said hospital to determine whether the defendant is of unsound mind or is mentally incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, and for grounds in support of this motion

refers to the affidavit of Mrs. Ethel Hopkins, his wife, attached hereto, and for such other and further relief which to the Court seems proper.

/s/ J. Norman Stone
Attorney for Defendant
* * *

[Certificate of Service]

[Filed Sept. 25, 1962]

AFFIDAVIT

DISTRICT OF COLUMBIA, ss:

I, Ethel Hopkins, being first duly sworn, on oath depose and state as follows: That I am the wife of the above-named defendant; that I have good and sufficient reason to believe that the above-named defendant is of unsound mind and mentally ill because he would look at things very hard, as if he never had seen them before, staring straight at them for some time; he would also start a conversation and stop in the middle and if one asked him what he was talking about he would be unable to explain; that he drew a gun on me and when I told him about it, he said he did not do it and started to cry; that he would ask for something and when it was given to him, he would state that he did not ask for it; he would talk to himself continuously; that he would go in the bathroom and lock the door and stay there for hours at a time; that these strange and unusual actions would frighten me and convinced me that he is mentally sick.

/s/ Ethel Hopkins

[Jurat - Sept. 13, 1962]

[Filed Oct. 24, 1962]

OPPOSITION TO MOTION TO SET ASIDE PLEA OF GUILTY AND FOR MENTAL EXAMINATION

Comes now the United States of America by its attorney, the United States Attorney for the District of Columbia, and in opposition to the defendant's Motion to set aside plea of guilty and for mental examination", filed September 25, 1962, represents to the Court the following:

1. On May 15, 1962, Dennis Hopkins was arraigned before Chief Judge McGuire, for violations of the federal narcotic laws, was delivered a copy of the indictment, entered a plea of not guilty, trial date was set for June 11, 1962 and bond was set at $2,500.00. On June 11, 1962, the trial date was continued until June 25, 1962 so that the defendant could retain counsel. On June 25, 1962, the defendant, represented by his counsel, H. Kenneth Schroeder, entered a plea of guilty to the first count of a two count indictment and his plea was accepted by the Court after inquiring of the defendant. On August 3, 1962, the defendant, represented by Mr. Schroeder, was sentenced to serve a term of not less than three (3) and not more than ten (10) years. The government then moved to dismiss the second count of the indictment.

2. The defendant by newly retained counsel now moves the Court to set aside the plea of guilty, but fails to state any basis or reason for this motion. Therefore, the United States is unable to answer further, except to state that all proceedings are in proper order and the plea was voluntarily and intelligently made, as is shown by the official transcript of the proceedings at the time the plea of guilty was entered and at the time of sentencing.

3. The defendant also requests a mental examination to determine his present mental capacity. The motion does not state the purpose of a mental examination at this time and fails to set forth any jurisdiction by which this Court can commit the defendant to a mental institution. The proper procedure to have a prisoner transferred from jail to a mental hospital after sentence is imposed, is the prison administrative transfer in accordance with Title 24, Section 302 of the District of Columbia Code.

WHEREFORE, it is respectfully submitted that the motion and the files and the records in the case conclusively show that the defendant is entitled to no relief and that his motion should be denied.

/s/ David C. Acheson
United States Attorney

/s/ Charles T. Duncan, Principal
Assistant United States Attorney

/s/ Oscar Altshuler
Assistant United States Attorney

/s/ B. Michael Rauh
Assistant United States Attorney

[Certificate of Service]

[Filed Oct. 24, 1962]

ORDER DENYING MOTION TO SET ASIDE PLEA OF GUILTY AND FOR MENTAL EXAMINATION

Upon consideration of the defendant's motion to set aside plea of guilty and for mental examination, the Court being of the opinion and hereby certifying that the motion and files and records in the case conclusively show that the defendant is entitled to no relief, it is, this 26th day of October, 1962

ORDERED that the defendant's motion to set aside plea of guilty and for mental examination be, and the same hereby is, denied.

/s/ Joseph C. McGarraghy
JUDGE

[Filed Nov. 2, 1962]

NOTICE OF APPEAL

Name and address of appellant - Dennis Hopkins - Lorton

Name and address of appellant's attorney - J. Norman Stone, Esq.
1010 Vt. Ave., N.W. - and Melvin Feldman - 1010 Vt. Ave., N.W.

Offense - Vio. — Narcotic Laws (26, USC 4704a, 21 USC 174)

Concise statement of judgment or order, giving date, and any sentence
Aug. 3, 1962 - Sentenced to imprisonment for a period of 3 years to 10 years. - J. Tamm.

Name of institution where now confined, if not on bail - Lordon

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

Date - 11/2/62

/s/ Dennis Hopkins By J.N.S.
Appellant

/s/ J. Norman Stone
Attorney for Appellant.

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17470

DENNIS HOPKINS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
B. MICHAEL RAUH,
WILLIAM C. WEITZEL, Jr.,
Assistant United States Attorneys.

No. 17470

QUESTION PRESENTED

In the opinion of the appellee, the following question is presented:

Was appellant entitled to a hearing on his motion, to set aside his plea of guilty?

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TABLE OF CASES

*Cases chiefly relied upon are marked by asterisks.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17470

DENNIS HOPKINS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant was charged in a two-count indictment filed on May 14, 1962, with violations of 26 U.S.C. 4704(a) and 21 U.S.C. 174 (Federal Narcotic Laws). (J.A. 1.) On May 18, 1962, appellant, with his attorney present, entered a plea of not guilty to both counts of the indictment. (J.A. 2.)

On June 2, 1962, appellant filed, *pro se*, a "Motion to Suppress Evidence." This motion stated that appellant was charged with the possession of heroin drugs. It related the date, place, and circumstances of appellant's arrest. (The prosecution of Count I centered around narcotics seized from appellant at the time of arrest—Record of Preliminary Hearing.) It also related the testimony given by the arresting officer at appellant's preliminary hearing and the circumstances allegedly constituting the probable cause for appellant's arrest. On June 19, 1962, appellant's counsel supplemented appellant's *pro se* motion to suppress with a motion to compel disclosure

by the Government of the name of the informant upon whose information the probable cause for appellant's arrest allegedly rested. Both motions were heard and denied by the court on June 25, 1962. (J.A. 5.)

On June 25, 1962, appellant pled guilty to Count 1 of the indictment which charged a violation of the Harrison Narcotic Act. (J.A. 5.) Appellant's counsel was present at the time this plea was entered. (J.A. 3–5.) Prior to accepting the plea, the court explained to appellant his right to a trial by jury. (J.A. 3.) Appellant told the court that he had discussed the case fully with his counsel. (J.A. 3.) Appellant stated to the court that he knew the maximum sentence he could receive. (J.A. 4.) The court read the first count of the indictment to appellant. (J.A. 4.) Appellant said that neither the United States Attorney nor his counsel had given him any promises or tried to compel him to enter a plea of guilty. (J.A. 4.) He said he voluntarily was pleading guilty (J.A. 4) only because he was guilty and for no other reason. (J.A. 5.) The court accepted the plea of guilty.

On August 3, 1962 appellant came before the court for sentencing. He expressed no desire to change his plea. (Transcript of Sentencing.) By a judgment and commitment filed on August 3, 1962, appellant was sentenced to a term of imprisonment of from three to ten years, with a recommendation that commitment be to an institution in which the defendant could receive treatment for narcotics addiction. (J.A. 7.) On the same date the court, on the motion of the United States, dismissed Count II of the indictment.

On September 25, 1962, appellant, by retained counsel, filed in the District Court a "Motion to Set Aside Plea of Guilty and For Mental Examination." It stated *in toto* (J.A. 7):

> Comes now the defendant, Dennis Hopkins, by and through his counsel of record, J. Norman Stone, and moves the Court to set aside the plea of guilty of June 25, 1962, and to order the defendant committed to St. Elizabeths Hospital or other mental hospital designated by the Court for such reasonable period as the Court may determine for examination and observation by the psychiatric staff of said hospital to determine

> whether the defendant is of unsound mind or is mentally incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, and for grounds in support of this motion refers to the affidavit of Mrs. Ethel Hopkins, his wife, attached hereto, and for such other and further relief which to the Court seems proper.

The motion was accompanied by the following affidavit (J.A. 8):

> I, Ethel Hopkins, being first duly sworn, on oath depose and state as follows: That I am the wife of the above-named defendant; that I have good and sufficient reason to believe that the above-named defendant is of unsound mind and mentally ill because he would look at things very hard, as if he never had seen them before, staring straight at them for some time; he would also start a conversation and stop in the middle and if one asked him what he was talking about he would be unable to explain; that he drew a gun on me and when I told him about it, he said he did not do it and started to cry; that he would ask for something and when it was given to him, he would state that he did not ask for it; he would talk to himself continuously; that he would go in the bathroom and lock the door and stay there for hours at a time; that these strange and unusual actions would frighten me and convinced me that he is mentally sick.

The Government filed a written opposition to this motion on October 24, 1962. It stated, *inter alia,* that (J.A. 9):

> 2. The defendant by newly retained counsel now moves the Court to set aside the plea of guilty, but fails to state any basis or reason for this motion. Therefore, the United States is unable to answer further, except to state that all proceedings are in proper order and the plea was voluntarily and intelligently made, as is shown by the official transcript of the proceedings at the time the plea of guilty was entered and at the time of sentencing.

3. The defendant also requests a mental examination to determine his present mental capacity. The motion does not state the purpose of a mental examination at this time and fails to set forth any jurisdiction by which this Court can commit the defendant to a mental institution. The proper procedure to have a prisoner transferred from jail to a mental hospital after sentence is imposed, is the prison administrative transfer in accordance with Title 24, Section 302 of the District of Columbia Code.

On October 26, 1962, the Court denied appellant's motion stating that "the motion and files and records in the case conclusively show that the defendant is entitled to no relief." (J.A. 10.) The instant appeal followed.

STATUTES AND RULE INVOLVED

Title 28 U.S.C. § 2255 provides, in pertinent part:

> *Federal custody; remedies on motion attacking sentence.*—A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.
>
> A motion for such relief may be made at any time.
>
> Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States Attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack,

or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

Title 26, United States Code, Section 4704(a), provides:

It shall be unlawful for any person to purchase, sell, dispense, or distribute narcotic drugs except in the original stamped package or from the original stamped package; and the absence of appropriate taxpaid stamps from narcotic drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession the same may be found.

Rule 32(d), Federal Rules of Criminal Procedure, provides:

Withdrawal of Plea of Guilty. A motion to withdraw a plea of guilty or of *nolo contendere* may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.

SUMMARY OF ARGUMENT

Appellant was not entitled to a hearing on his motion to set aside his plea of guilty. The motion, made three months after the time of the plea and almost two months after the sentencing, did not allege that appellant was mentally incompetent at the time he entered his guilty plea. The affidavit accompanying the motion made no showing that appellant was mentally incompetent at the time he entered the plea. And, the records and files of appellant's case show that appellant was mentally competent at the time of the plea.

ARGUMENT

The court properly denied without a hearing appellant's motion to set aside his plea

Rule 32(d) of the Federal Rules of Criminal Procedure authorizes the court to vacate a plea only when necessary to "correct manifest injustice." Appellant concedes "that on a motion to withdraw a plea of guilty after the imposition of sentence, the burden of proving "manifest injustice" under Rule 32(d) of the Federal Rules of Criminal Procedure devolves upon him" and that "the burden is a heavy one in such a case" (Brief p. 4).

In order to be entitled to a hearing on his motion, appellant was required to make a substantial showing, which was not conclusively disproved by the court's records and files, that he could meet the "heavy burden," if a hearing were granted, of proving that appellant's conviction constituted "manifest injustice." Appellant made no such showing. *Burrow* v. *United States*, 301 F. 2d 442 (8th Cir. 1962); *Delgado* v. *United States*, 282 F. 2d 678 (9th Cir. 1960); *United States* v. *McNicholas*, 298 F. 2d 914 (4th Cir. 1962); and *United States* v. *Thomas*, 291 F. 2d 478 (6th Cir. 1961).

Appellant's motion came three months after the date of the plea and almost two months after the date of sentencing. The motion, prepared by retained counsel, did not allege that appellant was mentally incompetent at the time he entered the plea of guilty. It did not even request a mental examination to determine appellant's mental competency at the time of the plea. Instead it requested a mental examination to determine

appellant's present mental competency. When the government's opposition to his motion pointed out to the court that the request was for a mental examination to determine present competency rather than competency at the time of the plea, appellant filed no written reply.

Thus, the motion did not contain even a bare allegation which, if proven, could justify the relief sought. Appellant's present mental condition—independent of his competency at the time of the plea—was irrelevant to the validity of appellant's conviction and a determination of the merits of his motion to set aside the plea.[1]

Nor did the affidavit of appellant's wife make a showing entitling appellant to a hearing on his motion. The affidavit does not indicate that appellant was incompetent at the time he entered his guilty plea or at any other time.[2] The affidavit is a series of generalities notably lacking in the specificity necessary to give it any real significance. As appellant's brief states: "the affidavit may be characterized as being inartful in the manner in which the pertinent matters are set forth * * *" (Brief p. 4). Most important, the affidavit contains no dates indicating when any of the vaguely described incidents occurred. There is no indication that anything mentioned in the affidavit has even the remotest connection in time with the question of appellant's competency at the time he entered the plea.

Moreover, any possible suggestion in the affidavit of incompetency is conclusively disproved by the records and files of appellant's case. The records and files of his case and the inferences from those records show conclusively that appellant understood the nature of the proceedings at which he pled guilty and that he understood the consequences of his plea.

(a) Twenty-three days prior to entering the plea, appellant filed a *pro se* motion to suppress from evidence the narcotics

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[1] There is nothing to indicate that appellant is presently incompetent except perhaps his wife's affidavit, the inadequacies of which are discussed, *infra*.

[2] The affidavit does not show that appellant was insane at the time of the offense. Moreover, it would be irrelevant if it did. Allegations of insanity at the time of the offense are not cognizable as grounds for collaterally attacking a conviction. *Bishop* v. *United States*, 96 U.S. App. D.C. 117, 223 F. 2d 582 (1955), *reversed on other grounds*, 350 U.S. 961 (1956). *Cf. Lynch* v. *Overholser*, 369 U.S. 705 (1962).

involved in his case. That motion reflects a clear understanding by appellant of the charges against him. It recited in detail (1) the date, place, and circumstances of appellant's arrest (narcotics seized at the time of the arrest formed the basis of the prosecution), and (2) the testimony of the officer at his preliminary hearing. It also contained a readable legal argument on the question of probable cause for appellant's arrest which was related to the alleged facts of appellant's case. A reading of this motion dispels any doubt that appellant might not have understood his situation and might not have been able to assist in his defense.

(b) Appellant was represented at the time of the plea and at the time of the sentencing by competent counsel. The District Court could reasonably conclude that if counsel had detected any indications of mental incompetency, he would have brought them to the court's attention at the time of the plea or sentencing.

(c) The transcripts of appellant's statements at the time of his plea and at the time of his sentencing show that appellant was responsive to the court's inquiries and that he understood the nature of the proceedings and their possible consequences. The trial court also had an opportunity on several occasions to observe appellant's appearance and demeanor. This Court should assume from the court's ruling on appellant's motion that the court considered appellant's appearance and demeanor on these occasions to be normal.

(d) The trial court in considering appellant's motion also had before it the probation report prepared for the court at the time of appellant's sentencing. While this report is not part of the record, it must be presumed from the court's ruling on the motion that the report contained no indication that appellant was mentally incompetent at the time of the plea.

(e) There was no allegation or indication of incompetency in any proceeding or paper filed in the court prior to appellant's motion to vacate the plea. Absent any such allegations or indications, appellant, like all persons accused of crimes, could be presumed to be sane. *Davis* v. *United States*, 160 U.S. 469 (1895). The motion to vacate the plea was not filed until three months after the date of the plea and almost two months after the date of the sentencing.

The situation in this case is one where (1) the records and files show that appellant was competent at the time of the plea; (2) appellant's motion did not allege that he was incompetent at the time of the plea and (3) the affidavit accompanying the motion because of its vagueness and its failure to state any times and dates made no showing that appellant was incompetent at the time of the plea. In this situation the court properly denied the motion without a hearing. *Burrow* v. *United States*, 301 F. 2d 442 (8th Cir. 1962); *Delgado* v. *United States*, 282 F. 2d 678 (9th Cir. 1960); *United States* v. *McNicholas*, 298 F. 2d 914 (4th Cir. 1962); *United States* v. *Thomas*, 291 F. 2d 478 (6th Cir. 1961); see also *Cain* v. *United States*, 271 F. 2d 337 (8th Cir. 1959).

The cases cited by appellant, *Briscoe* v. *United States*, 102 U.S. App. D.C. 145, 251 F. 2d 386 (1958); *Poole* v. *United States*, 102 U.S. App. D.C. 71, 250 F. 2d 396 (1957); and *Gearhart* v. *United States*, 106 U.S. App. D.C. 270, 272 F. 2d 499 (1959), do not support appellant's contention that he was entitled to a hearing. Those cases are distinguishable for several reasons. First, in those cases, unlike the instant case, there were strong indications of incompetency or insanity. Second, in each of those cases the motion to set aside the plea was made prior to sentencing. As this Court noted in the opinions in those cases, the burden placed upon the defendant is slight where the motion is prior to sentencing. But, as those cases also state, where, as in the instant case, the motion comes after sentencing, the burden upon the defendant to show incompetency is a heavy burden.[3]

Appellant's meager showing, conclusively discredited by the records and files of appellant's case, did not indicate that appellant could satisfy at a hearing his heavy burden of proving that appellant's conviction constituted a "manifest injustice." The court properly denied him a hearing.

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[3] It should be noted that once a narcotics case is disposed of, the narcotics can be destroyed pursuant to 26 U.S.C. 4733. This necessarily makes prosecution in such cases more difficult if a plea is set aside and a new trial granted. The situation emphasizes the reason for placing upon the defendant the heavy burden of showing manifest injustice where a motion to set aside a plea is made after the filing of the judgment and commitment.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

DAVID C. ACHESON,
United States Attorney.
FRANK Q. NEBEKER,
B. MICHAEL RAUH,
WILLIAM C. WEITZEL, Jr.,
Assistant United States Attorneys.

U.S. GOVERNMENT PRINTING OFFICE: 1969

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,470

DENNIS HOPKINS,

Appellant,

v.

UNITED STATES OF AMERICA

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INDEX

JOINT APPENDIX

[Filed May 14, 1962]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on May 1, 1962

THE UNITED STATES OF AMERICA)	Criminal No. 417-'62
)	
v.)	Grand Jury No. 437-62.
)	
DENNIS HOPKINS)	Violation: 26 U.S.C. 4704(a) 21 U.S.C. 174 (Possession and facilitation of concealment and sale of narcotics)

The Grand Jury charges:

On or about March 30, 1962, within the District of Columbia, Dennis Hopkins purchased, sold, dispensed and distributed, not in the original stamped package and not from the original stamped package, a narcotic drug, that is, fifty-one capsules containing a mixture totaling about 1,490 milligrams of heroin hydrochloride, quinine hydrochloride and mannitol and twenty-seven capsules containing a mixture totaling about 200 milligrams of heroin hydrochloride, quinine hydrochloride and mannitol.

SECOND COUNT:

On or about March 30, 1962, within the District of Columbia, Dennis Hopkins facilitated the concealment and sale of a narcotic drug, that is, fifty-one capsules containing a mixture totaling about 1,490 milligrams of heroin hydrochloride, quinine hydrochloride and mannitol and twenty-seven capsules containing a mixture totaling about 200 milligrams of heroin hydrochloride, quinine hydrochloride and mannitol, after said heroin hydrochloride had been imported, with the knowledge of Dennis Hopkins, into the United States contrary to law. This is the same heroin

hydrochloride which is mentioned in the first count of this indictment.

A TRUE BILL:
/s/ [illegible]
Foreman.

/s/ David C. Acheson
Attorney of the United States in
and for the District of Columbia

[Filed May 18, 1962]

PLEA OF DEFENDANT

On this 18th day of May, 1962, the defendant Dennis Hopkins, appearing in proper person and by his attorney Louis Maniatis, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

The defendant is remanded to the District Jail.

By direction of
MATTHEW F. MC GUIRE
Presiding Judge
Criminal Court # Assignment

* * *

* * *

[Filed July 18, 1962]

TRANSCRIPT OF PROCEEDINGS FROM CHANGE OF PLEA

1

Washington, D. C.,
Monday, June 25, 1962.

The defendant herein appeared before HONORABLE JOSEPH C. McGARRAGHY, United States District Court Judge, at 2:50 p.m., to change his plea.

APPEARANCES:

CECIL R. HEFLIN, Esq.,
Assistant U. S. Attorney,
for the Government.

H. KENNETH SCHROEDER, Esq.,
for the defendant.

PROCEEDINGS

MR. SCHROEDER: At this time, Your Honor, the defendant wishes to enter a plea to count one of the indictment.

THE COURT: What is it he wants to do?

MR. SCHROEDER: He wishes to enter a plea of guilty to count one of the indictment, namely, the charge of possession of narcotics without Federal tax stamps, knowing that he has a right to go to trial and be tried by a jury and that in entering such plea he waives his right.

THE COURT: Is this acceptable to the Government?

MR. HEFLIN: That is acceptable to the Government. We will dispose of the second count at the time of the sentence.

THE COURT: Your name is Dennis Hopkins?

THE DEFENDANT: Yes, sir.

THE COURT: If you don't understand me, please tell me so. I am going to ask you a couple of questions, and I want to make sure you understand me.

You are named as a defendant in an indictment which has two counts. One deals with the possession of narcotics which I will read you in just a moment, the sale from other than the original stamped package and not from the original stamped package, and the second count deals with another
3 violation of the narcotic laws. Your counsel said that you want to plead guilty to the first count of the indictment, that is, the one dealing with the stamped package. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: You understand that we are ready to go to trial in this case right now, we can bring the jury in and go forward with the trial, and that if I take your plea to this first count you will be waiving your right to a trial by jury? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Have you discussed this matter fully with your counsel?

THE DEFENDANT: Yes, sir, I have.

THE COURT: And have any promises of any kind been made to you to cause you to enter a plea to the first count of the indictment?

THE DEFENDANT: No, they haven't, Your Honor.

THE COURT: Are you aware of the consequences and possible sentence that can be imposed on the first count of the indictment? You know what the sentence can be?

THE DEFENDANT: No, I don't.

4 THE COURT: Have you told him what the sentence can be?

THE DEFENDANT: I know what the first count of the indictment sentence can be, yes, sir.

THE COURT: You know what it can be?

THE DEFENDANT: Yes, sir.

THE COURT: No promises have been made to you as to what it will be?

THE DEFENDANT: No, sir.

THE COURT: Neither the United States Attorney nor your counsel have given you any promises or tried to compel you to enter this plea; you are doing it voluntarily, in other words, is that right?

THE DEFENDANT: Yes, I am.

THE COURT: Now, the first count of the indictment to which you are entering a plea reads: "On or about March 30, 1962, within the District of Columbia, Dennis Hopkins purchased, sold, dispensed, and distributed, not in the original stamped package and not from the original stamped package, a narcotic drug, that is, fifty-one capsules containing a mixture totaling 1490 milligrams of heroin hydrochloride, quinine hydrochloride, and mannitol; and 27 capsules containing a mixture totaling about 200 milligrams of heroin hydrochloride, quinine hydrochloride,

5 and mannitol."

Did you on that occasion possess these fifty-one capsules and twenty-seven capsules, respectively.

THE DEFENDANT: Yes, I did.

THE COURT: And did they come from other than the original stamped package? Was there a stamped package that they came from?

THE DEFENDANT: No, there wasn't.

THE COURT: There was not. And you want to enter a plea of guilty to this first count because you are guilty and for no other reason?

THE DEFENDANT: Yes, I do.

THE COURT: Very well. Take his plea.

THE DEPUTY CLERK: Dennis Hopkins, in Criminal Case No. 417-62, in which you are charged with violation of the Federal Narcotics Laws, do you wish to withdraw your plea of not guilty heretofore entered and enter a plea of guilty to count one?

THE DEFENDANT: I do.

THE DEPUTY CLERK: Plea of guilty to count one.

THE COURT: Very well. Is he in custody now?

MR. SCHROEDER: Yes, Your Honor.

THE COURT: The defendant will be remanded and the case referred to the probation officer for a presentence report.

(Thereupon, the hearing on the change of plea was concluded.)

* * * * *

[Filed June 25, 1962]

[Clerk's Certificate - Withdrawal of Plea]

On this 25th day of June, 1962, came the attorney of the United States; the defendant, Dennis Hopkins, in proper person and by his attorney, H. Kenneth Schroeder, Jr., whereupon the motions of the defendant for disclosure of the name of a material witness and (pro se) to suppress evidence; coming on to be heard, after a hearing by the Court, are each denied; and thereupon the defendant withdraws his plea of not guilty heretofore entered and enters a plea of guilty to Count One of the indictment.

The case is referred to the Probation Officer of the Court and

the defendant is remanded to the District of Columbia Jail.

By direction of

JOSEPH C. McGARRAGHY
Presiding Judge
Criminal Court # 1

* * *

* * *

[Filed June 25, 1962]

[Clerk's Certificate - Denial of Defendant's Motion to Suppress Evidence and Motion to name Material Witness]

On this 25th day of June, 1962, came the attorney of the United States, the defendant by his counsel H. Kenneth Schroeder, Esquire; whereupon, the motion of the defendant to suppress evidence, and the motion of the defendant to name a material witness, each coming on to be heard, after argument by counsel are each and severally denied, without prejudice.

By direction of

Matthew F. McGuire
Presiding Judge
Criminal Court # Assign.

* * *

* * *

[Filed Aug. 3, 1962]

JUDGMENT AND COMMITMENT

On this 3rd day of August, A. D., 1962 came the attorney for the government and the defendant appeared in person and by counsel, H. Kenneth Schroeder, Esquire;

IT IS ADJUDGED that the defendant has been convicted upon his plea of Guilty of the offense of violating Title 26 of the United States Code, Section 4704(a) (Purchasing, selling, dispensing and distributing a narcotic drug, not in and from the original stamped package) as

charged in Count One, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of From Three (3) Years to Ten (10) Years.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ EDWARD A. TAMM
United States District Judge.

The Court recommends commitment to: an institution in which the defendant will receive treatment for narcotics addiction.

A True Copy. Certified this 3rd day of August, 1962.

/s/ HARRY M. HULL
Clerk

(By) Robert P. Murphy
Deputy Clerk.

[Filed Sept. 25, 1962]

MOTION TO SET ASIDE PLEA OF GUILTY AND FOR MENTAL EXAMINATION

Comes now the defendant, Dennis Hopkins, by and through his counsel of record, J. Norman Stone, and moves the Court to set aside the plea of guilty of June 25, 1962, and to order the defendant committed to St. Elizabeths Hospital or other mental hospital designated by the Court for such reasonable period as the Court may determine for examination and observation by the psychiatric staff of said hospital to determine whether the defendant is of unsound mind or is mentally incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, and for grounds in support of this motion

refers to the affidavit of Mrs. Ethel Hopkins, his wife, attached hereto, and for such other and further relief which to the Court seems proper.

/s/ J. Norman Stone
Attorney for Defendant
* * *

[Certificate of Service]

[Filed Sept. 25, 1962]

AFFIDAVIT

DISTRICT OF COLUMBIA, ss:

I, Ethel Hopkins, being first duly sworn, on oath depose and state as follows: That I am the wife of the above-named defendant; that I have good and sufficient reason to believe that the above-named defendant is of unsound mind and mentally ill because he would look at things very hard, as if he never had seen them before, staring straight at them for some time; he would also start a conversation and stop in the middle and if one asked him what he was talking about he would be unable to explain; that he drew a gun on me and when I told him about it, he said he did not do it and started to cry; that he would ask for something and when it was given to him, he would state that he did not ask for it; he would talk to himself continuously; that he would go in the bathroom and lock the door and stay there for hours at a time; that these strange and unusual actions would frighten me and convinced me that he is mentally sick.

/s/ Ethel Hopkins

[Jurat - Sept. 13, 1962]

[Filed Oct. 24, 1962]

OPPOSITION TO MOTION TO SET ASIDE PLEA OF GUILTY AND FOR MENTAL EXAMINATION

Comes now the United States of America by its attorney, the United States Attorney for the District of Columbia, and in opposition to the defendant's "Motion to set aside plea of guilty and for mental examination", filed September 25, 1962, represents to the Court the following:

1. On May 15, 1962, Dennis Hopkins was arraigned before Chief Judge McGuire, for violations of the federal narcotic laws, was delivered a copy of the indictment, entered a plea of not guilty, trial date was set for June 11, 1962 and bond was set at $2,500.00. On June 11, 1962, the trial date was continued until June 25, 1962 so that the defendant could retain counsel. On June 25, 1962, the defendant, represented by his counsel, H. Kenneth Schroeder, entered a plea of guilty to the first count of a two count indictment and his plea was accepted by the Court after inquiring of the defendant. On August 3, 1962, the defendant, represented by Mr. Schroeder, was sentenced to serve a term of not less then three (3) and not more than ten (10) years. The government then moved to dismiss the second count of the indictment.

2. The defendant by newly retained counsel now moves the Court to set aside the plea of guilty, but fails to state any basis or reason for this motion. Therefore, the United States is unable to answer further, except to state that all proceedings are in proper order and the plea was voluntarily and intelligently made, as is shown by the official transcript of the proceedings at the time the plea of guilty was entered and at the time of sentencing.

3. The defendant also requests a mental examination to determine his present mental capacity. The motion does not state the purpose of a mental examination at this time and fails to set forth any jurisdiction by which this Court can commit the defendant to a mental institution. The proper procedure to have a prisoner transferred from jail to a mental hospital after sentence is imposed, is the prison administrative transfer

in accordance with Title 24, Section 302 of the District of Columbia Code.

WHEREFORE, it is respectfully submitted that the motion and the files and the records in the case conclusively show that the defendant is entitled to no relief and that his motion should be denied.

/s/ DAVID C. ACHESON
United States Attorney

/s/ CHARLES T. DUNCAN, Principal
Assistant United States Attorney

/s/ OSCAR ALTSHULER
Assistant United States Attorney

/s/ B. MICHAEL RAUH
Assistant United States Attorney

[Certificate of Service]

[Filed Oct. 26, 1962]

ORDER DENYING MOTION TO SET ASIDE PLEA OF GUILTY AND FOR MENTAL EXAMINATION

Upon consideration of the defendant's motion to set aside plea of guilty and for mental examination, the Court being of the opinion and hereby certifying that the motion and files and records in the case conclusively show that the defendant is entitled to no relief, it is, this 26th day of October, 1962

ORDERED that the defendant's motion to set aside plea of guilty and for mental examination be, and the same hereby is, denied.

/s/ Joseph C. McGarraghy
JUDGE

[Filed Nov. 2, 1962]

NOTICE OF APPEAL

Name and address of appellant - Dennis Hopkins, Lorton.

Name and address of appellant's attorney - J. Norman Stone, Esq.
1010 Vt. Ave. N.W. - Melvin Feldman, 1010 Vt. Ave. N. W.

Offense - Vio. Narcotic Laws (26, U.S.C. 4704(a), 21 U.S.C. 174.)

Concise statement of judgment or order, giving date, and any sentence
Aug. 3, 1962 - Sentenced to imprisonment for a period of 3 years to 10 years. J. Tamm.

Name of institution where now confined, if not on bail - Lorton.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

Date 11/2/62

/s/ Dennis Hopkins by J.N.S.
Appellant

/s/ J. Norman Stone
Attorney for Appellant.